IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 799 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHANBHAI RAGHABHAI RATHVA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NN PRAJAPATI for the Appellant.
Mr. K.C.Shah, Addl. PUBLIC PROSECUTOR for the respondent.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 03/08/2006

ORAL JUDGMENT

The present appeal has been preferred against the judgment and order dated 31st May, 2003 in Sessions Case no. 202 of 2001 passed by the learned Additional

Sessions Judge, 2nd Fast Track Court, Surat, whereby the present appellant has been convicted for the offences punishable under sections 376 and 506(2) of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for six years and ordered to pay a fine of Rs.2000/-, in default, further simple imprisonment for three months for the offence punishable under section 376 of the Indian Penal Code and has also been sentenced to undergo rigorous imprisonment for two years and ordered to pay a fine of Rs. 500/-, in default, further simple imprisonment for one month for the offence punishable under section 506(2) of the Indian Penal Code. The sentences are not ordered to run concurrently.

2. Brief facts leading to the present appeal are that a complaint was registered by the prosecutrix on 19th October, 2001 to the effect that before approximately four months of lodging the FIR, the present appellant who is the husband of the sister of the prosecutrix, had taken the complainant for labour work at village Vav,Dist: Surat. The construction work was going on at that place. She and the appellant had gone as labourer on the construction site. There, the appellant as well as the prosecutrix were going at the terrace of the said under-construction building for sleeping at night and

there, the present appellant committed offence of rape and also administered threat to her so as to commit the offence punishable under section 506(2) of the Indian Penal Code. The complaint was given at 20.45 hours on 19th October, 2001 before Kwat police station, sub-district: Chhotaudepur. The age of the prosecutrix was 16 years on the date of the offence. It is stated by the prosecutrix that time and again, the appellant had committed the offence of rape on her, but as threat was administered, she had never conveyed this to anybody, but as she was carrying a child in her womb, she conveyed these facts to her elder sister and this is how the complaint was registered. Thereafter, upon investigation, the charge-sheet was filed against the present appellant and on the basis of the evidence on record, the appellant has been convicted and sentenced as above, against which the present appeal has been filed by the appellant.

3. I have heard the learned advocate for the appellant who has mainly submitted that there are enough omissions and contradictions in the evidence of prosecution witnesses and the prosecution has failed to prove beyond reasonable doubt the offence against the present appellant. It is submitted by the learned advocate for the appellant that the FIR has been filed at

a belated stage as an afterthought. Never any complaint was made prior to registration of the offence before the police, neither to police nor to the friend of the prosecutrix. It is also submitted by the learned advocate for the appellant that looking to the nature of the complaint, it is a case of consent and the age of the prosecutrix has not been proved beyond reasonable doubt by the prosecution and therefore, the judgment and order of conviction passed by the trial court deserves to be quashed and set aside. It is also submitted that there is no corroboration to the deposition of the prosecutrix and lastly it is submitted that two sentences have been awarded, firstly for the offence punishable under section 376 and secondly for the offence punishable under section 506(2) of the Indian Penal Code. However, the trial court ought to have mentioned that both the sentences should run concurrently. This aspect of the matter has not been appreciated by the trial court. In fact, looking to the prosecution case, even at its highest pitch, nothing is so abnormal looking to the depositions of the prosecution witnesses. So far as the words uttered by the present appellant are concerned, it is not constituting the offence punishable under section 506(2) of the Indian Penal Code so as to award separate sentence of two years and not to allow it to run concurrently. In fact, the

whole FIR has been filed as an afterthought. Looking to the evidence on record and the complaint, it is a clear case of consent and therefore, there was no question of administering any threat whatsoever. Nonetheless, at least, separate sentence ought not to have been awarded by the trial court. It is also submitted by the learned advocate for the appellant that if both the sentences are ordered to run concurrently, the present appellant will be enlarged from the judicial custody as on today because as on today, the appellant has already undergone total sentence of five years and few days and therefore, both the sentences may be ordered to run concurrently even if the prosecution case is believed to have been proved beyond reasonable doubt against the present appellant and therefore, the judgment passed by the trial court may be modified to that extent.

4. I have heard the learned Additional Public Prosecutor for the respondent State who has submitted that looking to the deposition of the prosecutrix, there are no omissions and contradictions in her deposition. There are other prosecution witnesses who have corroborated the version given by the prosecutrix. Looking to the medical evidence on record, it supports the case of the prosecution. The doctors have given clear

depositions against the present appellant. Likewise, looking to various panchnamas drawn by the police during the course of investigation have also proved the case against the prosecution beyond reasonable doubt. The prosecutrix was 16 years of age on the date of offence and therefore, the question of consent does not arise whatsoever and as threat was administered, the whole offence was brought to light at a later stage and therefore, rightly the trial court has not allowed two sentences to run concurrently, namely for the offence punishable under section 376 and secondly for the offence punishable under section 506(2) of the Indian Penal Code and therefore, the judgment and order passed by the trial court may not be interfered with by this Court.

5. Having heard the learned advocates for both the sides and looking to the evidence on record and the depositions of the prosecution witnesses, and other documentary evidence on record, coupled with the fact that circumstances for the imposition of sentences, in my view, the judgment and order dated 31st May, 2003 in Sessions Case No. 202 of 2001 passed by the learned Joint District Judge and Additional Sessions Judge, second Fast Track Court, Surat, by which the appellant has been convicted and sentenced to undergo sentence rigorous

imprisonment for six years and pay a fine of Rs. 2000/-, in default, further simple imprisonment of three months for the offence punishable under section 376 of the Indian Penal Code and to undergo rigorous sentence of two years and pay a fine of Rs/ 500/-, in default, further simple imprisonment of one month for the offence punishable under section 506(2)of the Indian Penal Code, requires to be confirmed, except the fact that both the sentences shall run concurrently for the following facts and reasons:

(i)The offence was registered on 19th October, 2001 and the offence had taken place approximately four months prior to the lodging of the FIR at village Vav, Ta: Kwat, Dist: Surat. The prosecutrix and the appellant who is the husband of the sister of the prosecutrix, were working together as manual labourer at the construction side, where both of them were residing together and were sleeping at the terrace of the said partly constructed building. There the present appellant committed offence of rape more than once on different occasions, but because of the threat administered by the present appellant, the prosecutrix had not revealed the offence before anybody. But at a

later stage, she was carrying on a child in her womb and therefore, after four months of having a child in her womb, a complaint was filed as stated hereinabove before Kwat police station. Looking to the deposition of the prosecutrix PW 3 at exh. 15, her deposition clearly implicates the present appellant. Though evidence has taken place in the Court after several months from the registration of the offence and though she is a rustic witness, she has given a clear deposition which brings accusation upon the present appellant. There are enough corroborations to her deposition by the complaint as well as by other prosecution witnesses and the medical evidence. There are no omissions and contradictions in her deposition. Looking to her deposition before the Court, she is a trustworthy witness. In no uncertain terms, she has stated that the present appellant has committed rape for more than once against her will at the place stated hereinabove. As threat was administered, she had not conveyed to anybody about the offence committed by the appellant. But lateron, as she was carrying on a child in her womb, she was compelled to reveal the offence. The age of the prosecutrix was 16 years on the date of

the offence as revealed from the evidence of prosecution witnesses. Thus, the question of her consent does not arise at all.

(ii) Looking to the medical evidence on record given by Dr. Jayesh M Patel, PW 1 at exh. 6; Dr. Sachin Prafulchandra PW 2 at exh. 10; Dr. Harshad Patel at exh. 25 and looking to the deposition of Dr. Ajaybhai Mehta PW 14 at exh. 38, their depositions are corroborative to the deposition of the prosecutrix. This aspect of the matter has been correctly appreciated by the trial court in para-9 of its judgment.

(iii) Looking to other evidence of prosecution witness, who are PW 4 at exh.18, PW 5 at exh.19, PW 16 at exh.21, PW 7 at exh.23, PW 15 at exh. 41, their depositions are also corroborative to the deposition of the prosecutrix. There is also an extra judicial confession by the present appellant before Dr. Jayeshbhai M Patel PW 1. Thus, looking to the overall appreciation of the evidence of prosecution witnesses, I am of the opinion that the prosecution has proved, beyond reasonable doubt, the offence against the present appellant punishable under sections 376 and 506(2) of the Indian Penal Code. No error has been committed by

the trial court in appreciating the evidence on record. There is some controversy as to the age of the prosecutrix. Nonetheless, it is proved that the whole offence had taken place against her will and desire and therefore, the present appellant has rightly been convicted for the offence punishable under section 376 of the Indian Penal Code.

(iv) Now, the question to be determined is whether both the sentences should be allowed to run concurrently or separately. The learned advocate for the appellant has submitted that the age of the appellant was 21 years on the date of the offence as per charge-sheet filed by the police. Moreover, the present appellant is having a small child. Repentance has also been shown by the present appellant looking to the judgment passed by the trial court when he was heard for the quantum of sentence. There are no antecedents of the present appellant and therefore, both the sentences may be ordered to run concurrently. I am in full agreement with the contention raised by the learned advocate for the appellant for the reasons stated by the learned advocate for the appellant. Looking to the age of the appellant and

the fact that there are no antecedents of the appellant and considering the facts and circumstances of the case, the sentences should be ordered to run concurrently.

6. As a cumulative effect of the above facts and reasons, in my opinion, the offence punishable under sections 376 and 506(2) has been proved beyond reasonable doubt against the appellant and hence the judgment and order dated 31st May, 2003 in Sessions case no.202 of 2001 passed by the learned Joint District Judge and Additional Sessions Judge, Second Fast Track Court, Surat is hereby confirmed. The quantum of sentence awarded by the trial court is also true and correct. There is no error committed by the trial court in convicting and imposing the sentence upon the appellant. However, both the sentences ordered by the trial court for the offences punishable under sections 376 and 506(2) are ordered to run concurrently. It is fairly submitted by the learned Additional Public Prosecutor that as per jail record, the sentence of 5 years, 7 months and 7 days has already been undergone by the present appellant. The said calculation is placed on record and is taken on the record. The appeal is allowed to the aforesaid extent only. Rule made absolute accordingly.

(D.N.Patel,J)

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